Briefing materials – EPA Region 9

U.S. EPA Administrator Lisa P. Jackson California visit 7/23/12-7/25/12

WATER DIVISION:

1. San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Delta):

The Delta, the hub of California's water supply system, is formed by the confluence of the state's two largest rivers: the Sacramento flowing south from its headwaters near Mt. Shasta and the San Joaquin flowing north from its origins high in the southern Sierra Nevada. The 1100 square mile Delta is a web of 60 reclaimed islands protected by earthen levees and approximately 700 miles of waterways. The Delta watershed drains nearly 50% of the state's runoff and supports 80% of California's commercial salmon fishery. The Delta is important habitat for fish, wildlife, and waterfowl, including several threatened and endangered fish species. Pumps in the south Delta operated by the State and federal government divert 20 to 70% of natural flow to the Central Valley and Southern California, supplying a portion of the drinking water for 24 million Californians and water for more than 1,800 agricultural users who produce half the nation's fruits and vegetables. Water that is not diverted in or upstream of the Delta flows through San Francisco Bay to the Pacific Ocean. EPA has long been involved in efforts to protect and restore Delta water quality. A three-year drought (2007-2010) exacerbated perennial water supply and fishery conflicts and intensified endangered species litigation related to water project operations. These issues, plus the ongoing risks posed by levee instability, increasing urbanization, climate change and earthquakes led State and federal policy makers to again initiate new processes to "fix the Delta".

- EPA committed in the Interim Federal Action Plan to "assess the effectiveness of the current regulatory mechanisms designed to protect water quality in the Delta". In February 2011, EPA initiated this assessment through an Advance Notice of Proposed Rulemaking. The ANPR outlined the most critical Delta water quality issues and their current regulatory framework, and solicited input on how best to address these issues. A follow-up report will be issued later this year synthesizing public input and recommending priority actions.

- In 2012, Region 9 will draft new site-specific selenium water quality criteria for the San Francisco Bay and Delta reflecting the most recent science on bioaccumulation of selenium in Bay-Delta species.

- EPA is supporting the State and Regional Water Boards as they address the breadth of water quality and habitat degradation concerns in the Delta. The Water Boards have taken several key actions in the Delta, including upgrading NPDES permits and approving TMDLs. In 2012, the State initiated an update to water quality standards in the Delta to protect estuarine habitat and fish migration.

- Since 2006, the major water districts dependent on the Delta have been developing a Habitat Conservation Plan (the Bay Delta Conservation Plan, or BDCP) with the

California Departments of Water Resources and Fish & Game, the U.S. Department of Interior (FWS and BOR) and National Marine Fisheries Service to address endangered species concerns and seek water supply assurances. The BDCP will propose a controversial new conveyance facility to shift most diversions from the south Delta to the north Delta in an attempt to reverse the decline of several beneficial uses and add stability to water operations. The State and Federal agencies are preparing a DEIR/S on the BDCP; EPA is a cooperating agency and the project will require CWA 404 permits. The DEIR/S has an ambitious schedule, calling for public release in 2012 along with an announcement of a preferred project by Governor Brown and Secretary Salazar on July 25. EPA has provided input to ensure that key water quality issues are adequately considered in the analysis of alternatives. We are also coordinating with the Corps of Engineers and the lead BDCP agencies to integrate CWA 404 permitting into the overall BDCP process.

2. California No Discharge Zone:

On September 2, 2010, the U.S. EPA proposed a draft rule in the Federal Register to establish a No Discharge Zone under the Clean Water Act for vessel sewage in California marine waters, in response to a request from the California Water Resources Control Board (pursuant to a provision in the State's Clean Coast Act of 2005). The rule will prohibit both treated and currently prohibited untreated sewage discharges in State marine waters from all cruise ships, and from large oceangoing ships with available sewage holding capacity (defined in the rule as all large oceangoing vessels that have not fully utilized available holding tank capacity or that contain sewage generated outside the NDZ, which equates to approximately 62% of large oceangoing vessels that called to California ports in 2010). The rule will be the first application of the Clean Water Act to prohibit vessel sewage discharges for an entire State's marine waters under CWA Section 312 (f)(4)(A) and for a specific class of vessels. Sewage contains pathogens, nutrients and other contaminants that can result in negative human health, environmental, and economic impacts. Although significant ocean water quality improvements have been made due to regulation of land-based municipal sewage discharges and stormwater runoff, vessel sewage has not received the same level of attention until now. Prohibiting large vessel sewage discharges will provide additional protection and improvement of California's marine water quality vital to supporting unique ecological environments, commercial and economic interests, and human health. Economic impacts to the cruise and shipping industry will be minimal while providing important water quality benefits to California's marine resources. The EPA worked with the State of California, environmental groups, and the shipping industry to address changes from the draft to final rule and as a result we determined that the final rule will provide increased environmental protection.

- In 2009 California saw at least 2.15 million cruise ship passengers and received over 12,000 cargo ship calls; numbers that are projected to grow.

- Under some circumstances, vessel sewage discharges treated by an MSD (marine sanitation device) may contain higher concentrations of pollutants than discharges of treated sewage from land-based wastewater treatment plants and may cause or contribute to water quality impairments and impacts to sensitive marine habitats.

- Of the 434 California beaches monitored in 2009, 40% experienced advisories for

exceeding water quality standards for pathogens. Advisories were issued for all 50 Los Angeles County beaches, over 85% of San Francisco beaches, and 75% of San Diego beaches.

- The rule will apply along California's 1,624-mile coastline within 3 miles of shore, including major islands and tidally influenced bays estuaries and rivers.

- The rule will protect 5,222 square miles off California's coast, nearly tripling the currently protected 1,755 square miles of marine sanctuaries.

- The rule will prohibit the discharge of approximately 22.5 million gallons of treated vessel sewage (89% of the estimated 25.2 million gallons of sewage generated by the regulated class of vessels while in California marine waters each year, and 80% of the total estimated vessel sewage generation by all classes in California marine waters each year). Twenty-two million gallons per year would fill a line of tanker trucks approximately 30 miles long.

- The final rule will be signed in February, 2012 and published in the Federal Register shortly thereafter. Region 9 is working with the National Marine Sanctuaries and Coast Guard to prepare coordinated outreach and education materials to inform vessel owners about the new requirements.

3. California's Impaired Waters – 303(d) List:

Of the total 3 million acres of lakes, bays, estuaries and wetlands in the state, 1.6 million acres are not meeting water quality goals and of these 1.4 million acres still need a TMDL. Of the total 215,000 miles of rivers, streams and shoreline, 30,000 miles are not meeting water quality goals and of these 20,000 miles still need a TMDL. While more than 50% of the lakes, bays, estuaries and wetlands acres have been assessed, less than 20% of the coastline, rivers and stream miles have been assessed. California reviewed over 22,000 data sets in developing the 2008-2010 list, seven times the number reviewed for the prior list. This increase is due to a more thorough review of existing data as well as the gathering of new water quality information.

- Toxicity listings have increased 170% from 2006 to 2010. Often only certain pollutants are measured when sampling water quality to determine toxicity. However, toxicity testing provides very useful information on whether aquatic organisms are experiencing reduced growth or survival by pollutants in a water body acting singularly or cumulatively.

- The number of bacteria listings, locations where bacteria concentrations reach levels unsafe for swimming, has increased 90% from 2006 to 2010. However, this increasing trend is likely due to a more thorough assessment of water quality data at California's fresh and saltwater beaches, rather than an increase in bacteria levels. The State's BEACH monitoring program does a thorough job of monitoring the coastal beaches most commonly used by the public and some counties are piloting rapid assessment methods to be able to more quickly assess whether bacteria levels have reached unsafe levels. In combination with recently installed electronic signs at some of the pilot locations, beach goers can be more quickly informed of beach closures due to high bacteria.

- Trash impairments have increased 76% from 2006 to 2010. The observed increasing trend is likely due to better reporting, often by the public, of trash problems in waters. Wildlife can be harmed by ingesting or becoming entangled in floating trash. California is working on a statewide Trash Policy to reduce trash impacts to local wildlife and reduce California's contribution to the Great Pacific Garbage Patch. Several cities have a ban, tax, or incentive program to reduce single-use plastic bags, Styrofoam containers, and other commonly discarded items which cannot decompose. Programs such as those, will make great improvements to reducing the problem of trash polluting lakes, river and the ocean.

- The numbers of listings showing pollutants in fish are at levels too high for safe human consumption has increased 24% from 2006 to 2010, with the greatest increases seen in mercury. The observed increasing trend is due to a recent effort to measure pollutants that bioaccumulate in sport fish in California's lakes and coastal waters. With this information California was able to issue advisories warning the public of the risks of consuming fish from certain lakes. Many of the pollutants causing impairment are no longer manufactured, such as DDT, and are slowly decreasing in concentration over time.

- Pesticides listings have increased 36% from 2006 to 2010. Much of this increase is due to more thorough monitoring required under the State's innovative Irrigated Lands Regulatory Program. This program is one of California's waiver programs that regulates nonpoint sources of pollution and is groundbreaking nationwide. It requires the agricultural community to limit pollutants in their discharges and conduct monitoring. Close collaboration between the Water Boards and the Department of Pesticide Regulation has helped to make gains in reducing pesticide discharges to surface and groundwater. As an example, along 79 miles of the Feather and Sacramento Rivers the pesticide diazinon is no longer polluting the waterway.

4. East Bay Municipal Utilities District and Satellites – Consent Decree:

EBMUD operates a large sewage treatment plant, three wet weather treatment facilities ("WWFs") and major interceptor lines that transport sewage collected from seven East Bay contributing cities that include Oakland, Berkeley, Alameda, Albany, Piedmont, Emeryville and the Stege Sanitary District (collectively called the Satellites), and serves a total population of approximately 650,000. The wet weather discharge facilities are located at Point Isabel and at two locations on the Oakland Estuary, and were designed to contain excess sewage during storms when flows exceed the capacity of the district's main wastewater treatment plant. The excess flow is caused by storm water and groundwater leaking into the region's aging sanitary sewer pipes and through improper connections that channel storm water flow into the Satellites' sanitary sewer systems. Occasionally, these flows exceed the capacity of the WWFs, resulting in a discharge of untreated and partially treated sewage to San Francisco Bay. Over 125 million gallons were discharged during the FY11 wet weather season. In 2009, the Regional Board issued an amended permit to EBMUD which prohibits EBMUD from discharging from the WWFs. Shortly thereafter, EPA and the Regional Board reached a settlement with EBMUD that requires them to begin the studies and improvements needed to eliminate these discharges.

In a related action, the Regional Board issued amended permits to each of the Satellites prohibiting them from causing or contributing to overflows from the WWFs. EPA and the State conducted joint inspections of each Satellite's collection system to identify the actions needed to address the excess wet weather flows and to help prevent sanitary sewer overflows with their collection systems. In November, 2009, EPA issued an Administrative Order to each Satellite, which in September, 2011 were incorporated into one SO covering all seven Satellites and requiring a number of actions to make substantial improvements to their systems and to complement the work required under the EBMUD SO. Taken together, the work being done under these two SOs represents the first step in a coordinated Region-wide effort to improve the quality of the San Francisco Bay and result in a healthier environment for the communities surrounding the Bay. The major actions required under these SOs include the following:

- EBMUD is conducting region-wide flow monitoring to determine flow limit allocations from each of the Satellites, while the Satellites are conducting flow monitoring within their sub-basins to identify and prioritize areas of excess flow for sewer repair and flow reduction.

- EBMUD is implementing a Regional Private Sewer Lateral ("PSL") Program requiring replacement of private sewer laterals upon sale of property or property renovations valued at more than $100,000, and is also required to spend at least $2 million annually in incentives to accelerate repair of these pipes. Private sewer laterals can be a significant contributor to excess flow. Each Satellite is required to work with EBMUD in the implementation of the Regional program and/or to implement a PSL program in their community which is equivalent to the EBMUD program.

- EBMUD is developing an Asset Management Program template that each Satellite will consider in developing their own Asset Management Implementation Plan, which will provide the steps that each Satellite will take to ensure that their systems are properly operated and maintained.

- Each Satellite is developing a plan to reduce inflows into their collection systems by establishing protocols to identify and eliminate areas where illicit connections to the sewer system exist and where manholes in areas prone to flooding need to be sealed.

WATER DIVISION Supplemental: Does California's NPDES Pesticide Permit Prohibit Mosquito Abatement in Impaired Waters?

Background:

- 2009 6th Circuit decision (*National Cotton Council, et al. v. EPA)* required EPA and states that issue CWA permits to provide permit coverage for pesticide applications to waters of U.S.
- CA adopted 3 Pesticide General Permits in 2011 that are more stringent that EPA nationwide permit adopted last year. The CA permits:

- exclude coverage for discharges to impaired water of "any pesticide in the same chemical family" as a pesticide causing water quality impairment (303(d) listing),
- contain no emergency application provisions to address public health emergencies,
- require more intensive water quality monitoring and reporting.

- Mosquito abatement districts are raising concerns CA permit will prohibit mosquito control fogging around impaired waters (e.g. Contra Costa, Sacramento Counties).
- R9 (Smith, Mues, Maier) briefed SEPW staff on 1/30, explaining:
  - EPA does not have to approve State NPDES permits, but we informally supported the State permits as they met minimum federal requirements.
  - Although general permit coverage for a discharge to impaired waters is prohibited, an applicator can apply for an individual permit (note-Water Board staff incorrectly told SEPW the State would not issue an individual permit for a discharge to impaired waters).
  - We believed (incorrectly) the CA permit has an emergency application provision.
  - The permit does not require "duplicate" monitoring. Although the CA permit requires more monitoring than the EPA permit, there are no other pesticide application monitoring requirements under current pesticide use requirements.
  - This issue is likely unique to CA as few states have waters listed as impaired by currently used pesticides.

Key Points:

- Neither EPA or CA want to impede necessary insect abatement programs.
- While coverage is not available through general permit for discharges to impaired waters of the impairing pesticide, coverage is available with individual permits.
- While more than 100 CA waters are impaired by organophosphate pesticides and 14 by pyrethrins, only 7 creeks are impaired by both (note- CA listed these waters, not EPA).
- Substitute insecticides are available for all waters and can be authorized for use under the general permit- alternative adulticides where water is listed impaired and/or larvicides and biological treatments, which are not basis for 303(d) listings.
- Due to concerns about excluding coverage for pesticides similar to those causing impairment, State Water Board plans to revise the permit by about April, 2012 to:
  - remove the "...in the same chemical family" restriction, thereby expanding the suite of adulticides available for mosquito control,
  - clarify individual permit coverage is available where general permit is not, and
  - consider adding emergency exceptions language.
- This issue is likely limited to CA as the State monitors and controls water quality impacts of pesticide use far more than most states and has found many more problems.

WASTE MANAGEMENT DIVISION:

1. EPA Activity in Kettleman Hills, CA: Chemical Waste Management, Inc. (CWM) owns and operates a commercial waste treatment, storage, and disposal facility in Kettleman City, Kings County, California (KHF). CWM is seeking to modify permit approvals for expanded management of hazardous waste and PCBs at the KHF. As part of the

evaluation process, Region 9 required CWM to complete a PCB congener study and risk assessment. EPA concluded that there is no evidence suggesting that PCB congeners from operations at the KHF are migrating off-site at concentrations that would adversely affect the health of local community residents or the environment.

- The community is concerned because there was an occurrence of 11 birth defects from 2007-2010. The California Department of Public Health did an investigation and did not find a specific cause or exposure to chemicals in Kettleman City's environment that could explain the birth defects.

- On November 17, the California Department of Toxic Substances Control (DTSC) and EPA sponsored a community workshop and meeting in Kettleman City. The workshop and meeting provided information on the facility's RCRA and TSCA permitting process, past enforcement actions, and an indoor pesticide sampling study conducted in homes throughout the community. Several state and local agencies participated and answered questions from community members. The entire spectrum of views ranging from support to complete opposition of the facility's proposed expansion was represented during the 1.5 hours of questions and answers.

- As part of our ongoing application review, we are currently in consultation with Fish and Wildlife Service under the Endangered Species Act regarding endangered plant and animal species that would be impacted by the proposed expansion.

- Internally, Region 9 is working with HQ OCR on their investigation of the 17 year old civil rights complaint filed against California Department of Toxic Substances Control that involves the KHF.

- In early January, the California Department of Health Services announced $8 million in funding to the community to construct an alternative drinking water source. The town's groundwater is tainted with benzene and arsenic, both of which occur naturally. While the new drinking water source is good news, completion of the project is expected to take about two years.

- On August 24, 2011, EPA settled with CWM requiring them to pay $400,000 and complete various injunctive tasks to resolve the violations totaling an estimated $600,000. EPA has no information that any of the violations identified during this investigation present a risk to the Kettleman City community. Community stakeholders are very interested in this enforcement action.

SUPERFUND DIVISION

1. West Oakland Lead Cleanup

The West Oakland Residential Lead investigation area is comprised of six residential blocks of approximately 150 residences located adjacent to the AMCO Superfund site. Using an

innovative treatment technology of ground fish bones to convert lead into a safer, less bio-available compound, and a labor pool from the surrounding community, this project is a great example of working with communities to find solutions to environmental problems. This project is attracting national attention as an innovative approach to dealing with urban lead.

- Project will address lead contaminated soil in the yards of 150 homes
- Approximately 1,000 residents live in the Project area of which about 1/3rd are children under 12 yrs of age.
- Proposed treatment remedy for the Project is projected to cost approximately 60% the cost of traditional "digging and hauling"
- The source for the calcium phosphate is from waste fish bones, harvested and processed in Alaska, and previously a waste product.
- The fish bones are ground and mixed in the soil, and as the bones degrade, the phosphate binds with lead, making the lead less toxic. This process is known as phosphate induced metals stabilization.
- Local hires trained through Brownfields job training grants
- Solar panels provide power to field office, including recharging an electric truck used onsite
- Reclaimed wastewater used in treating yards
- Currently have completed restoration of 42 yards.

2. Santa Clara County Superfund Sites

There are 23 Superfund sites in Santa Clara County, CA (home to Stanford University and much of the Silicon Valley). This is the highest number of sites by county in the country. These sites were listed between 1984-1988, and are predominantly shallow groundwater contamination sites, resulting from chlorinated solvent releases from electronics and high-tech manufacturing facilities (one site is an asbestos contaminated site, and one is a former US Navy base). Most are relatively small sites and less complex when compared to other sites in our region (e.g., mine sites and legacy landfills) and mainly impact shallow groundwater, and therefore don't impact drinking water supplies (though drinking water standards are typically used as the remedial action goal to consider the site cleaned up). They could, however, still pose a threat via vapor intrusion. These small sites are being overseen by State authorities. Because the sites are located over bay muds, it has proven difficult to meet drinking water standards for the cleanup; however most of these sites are in long term cleanup operations.

At the larger, more complex Middlefield-Ellis-Whisman (MEW) site, responsible parties including the US Navy and NASA are currently undertaking the largest vapor intrusion investigation in the nation for a commercial site, while private parties including Raytheon and Intel are implementing a vapor intrusion remedy.

3. United Heckathorn Superfund Site

United Heckathorn was a pesticide (mainly DDT and Dieldrin) processing, packaging, and shipping facility that operated from 1947 to 1966 adjacent to the Lauritzen Channel in the Inner Richmond Harbor, Richmond, California, just northeast of San Francisco. It was listed on the

NPL in 1990. Three removal actions in late 1990, 1991, and 1993 removed more than 3300 cubic yards of pesticide contaminated soils from the property. The 1995 Record of Decision required the dredging of the impacted channels and capping of the upland property. At the conclusion of the remedy, more than 3 tons of DDT were removed from the site, though due to the structures and pilings within the channel, not all contaminated sediments were removed. A fish advisory was issued for the Inner Richmond Harbor in 1993, and was updated in May 2011 with a specific advisory for NO fish consumption of fish taken from the Lauritzen Channel.

The first Five Year Review in 2001 found that the remedial goals were not being maintained in the sediment area, but that the upland cleanup remained protective. Sediment and water investigations were initiated to identify remaining sources of contaminants and actions were taken to seal a previously-unidentified pipe that could drain into the channel from the site. The second Five-Year Review in 2006 recommended a focused feasibility study to address remaining contamination. The third Five-Year Review in 2011 re-iterated the need to identify additional sources of DDT, since levels in the Lauritzen Channel continue to rise to near pre-ROD levels. However, fish tissue and sediments outside the channel remain near cleanup levels.

EPA is working with California Office of Environmental Health Hazard Assessment to re-deploy signs notifying the public that NO fish should be consumed from Lauritzen Channel. The Lauritzen Channel is an active marine terminal with no public access effectively preventing fishing. In addition, EPA is deploying passive samplers at the site on February 2, 2012 to determine the flux of DDT from sediments into the water column, and the bioavailability of the contaminants to the fish and mussels in the channel.

EPA has briefed the city government officials, who have expressed concerns regarding the pace of the cleanup and the rebounding of the site contaminants. Understanding fate and transport and remediation options for sediments is very complex. Using national experts, the site team is proceeding with a focused feasibility study to determine the best course of action to complete cleanup at the site.

4. **Columbus Manufacturing, Inc. Settlement**

EPA and DOJ announced the settlement with Columbus Manufacturing, Inc. on January 31, 2012 for two separate releases of anhydrous ammonia in 2009, the second of which resulted in the closure of US 101, the hospitalization of 17 people, and the 10,000 person Genentech campus to advise staff to stay home for the day.

The complaint alleged that CMI violated the Clean Air Act's General Duty Clause [§112(r)(1)] for not designing and maintaining a safe facility to prevent accidental releases, and failure to minimize the consequences of accidental releases that do occur. The facility isn't regulated through the Risk Management Program (RMP) because they didn't meet the 10,000 lb threshold for ammonia on-site.

The settlement with the federal government included a $685,446 civil penalty and the conversion of their ammonia chiller system to a safer ammonia glycol system, valued at more than $6 million. The facility previously settled with San Mateo County for $850,000 in 2011. The facility will also be subject to third-party compliance audits as part of the settlement.

5. **Hunters Point Naval Shipyard Superfund Site**

EPA has overseen the Navy's 15-year study of Parcel E-2, a landfill, as part of the larger Superfund site. EPA and the State of CA required the Navy to take extensive soil, groundwater and airborne dust samples to understand the nature of Parcel E-2 and evaluate alternatives. 2000 soil samples, 800 groundwater samples, and 3000 soil gas and air samples were taken during the investigation of Parcel E-2. Navy released the Proposed Plan at the beginning of September, with the 45-day public comment period beginning on Sept. 7. The Navy proposes to partially remove the most highly contaminated portions of the landfill and cap the remainder with a multi-layered cap. There was a public meeting to present the Plan and preferred alternative on September 20, 2011. Navy extended the public comment period to Nov. 21. The Navy, EPA and other regulators attended a City and County of San Francisco Board of Supervisors committee hearing on October 24 to explain the Proposed Plan.

- Extensive interest from the public regarding the Navy's action and the City's plans for redevelopment around the Shipyard
- EPA agrees with the Navy's proposed preferred alternative, and both welcome comments from the community before a clean-up decision is made
- The proposed plan would allow for transfer to the City and ultimate development as a park in the future
- There is some vocal opposition to the proposed plan. Opponents express concerns about the contents of the landfill, incomplete characterization and a preference for the landfill to be excavated to an off-site location.
- The Record of Decision is expected in June 2012.

6. **Midway Village, Daly City**

The Midway Village Housing Complex is a low-income housing complex in Daly City, CA and is home to over 100 families (predominantly African American and Latino). The housing complex is owned and operated by the San Mateo County Housing Authority. The housing complex was built on contaminated soils from an adjacent PG&E facility. From approximately 1906 to 1916, Pacific Gas and Electric Company's (PG&E's) Daly City gas manufacturing plant converted oil to gas to be used for lighting, heating, and cooking. As a result of the manufacturing process, coal, tar, and soot residues were left in the soil. In 1944, the federal government took portions of the PG&E Site and adjacent properties (including the areas which are now Bayshore Park and Midway Village) through eminent domain to construct U.S. Navy housing. The contaminated soil from the PG&E facility was used as fill material to grade the adjacent low-lying areas. Only a portion of the housing was built on top of contaminated soil. In 1976, the U.S. Navy housing was demolished and the Midway Village Housing Complex was built.

- More than 15,000 cubic yards of contaminated soil were removed from the housing area through cleanup actions from 1993-1994 and again in 2000-2002.
- Residents continued to complain of health problems, and demanded relocation and health care.
- In January 2011, HUD approved the Section 8 relocation voucher program, and vouchers were issued to all eligible Midway Village residents in May 2011.

COMMUNITY AND ECOSYSTEMS DIVISION:

1. **Title VI of the Civil Rights Act in Region 9:**

Based on OCR's updated docket on the EPA website, 13 of the 37 open Title VI complaints are filed against recipients in Region 9. One of the oldest cases, filed in 1994, is the matter referred to as the PADRES complaint and includes allegations related to three landfills in California, most notably the Chemical Waste facility located in Kettleman City. On June 30, 2011, the Center for Race Poverty and the Environment (CRPE) filed a lawsuit against EPA for failing to complete its administrative disposition of the PADRES complaint. On October 21, 2011, a coalition of civil rights and Title VI advocacy organizations, including CRPE and Marc Brennan of the City Project in Los Angeles, sent a letter to EPA with a list of demands related to Title VI program. One of the demands is for EPA to rescind the *Angelita C.*case settlement reached between OCR and the California Department of Pesticides Regulation on August 24, 2011.

- Rafael DeLeon, Director of Office of Civil Rights, offered to continue the dialogue with Title VI activists.
- In response, the groups requested in the October 21 letter, a direct meeting with the Administrator in lieu of continued discussions with OCR, and requested the following:
  - Rescind or clarify the *Select Steel* civil rights decision and the *Angelita C. v. California Department of Pesticide Regulation* settlement agreement to ensure proper and robust enforcement of the Title VI of the Civil Rights Act.
  - Request the oversight and guidance of the Department of Justice's Federal Compliance and Coordination Section to help the EPA institutionalize complaint investigation procedures, enforcement measures, and compliance assurance tools pursuant to Title VI of the Civil Rights Act.
  - With Department of Justice oversight, respond to public comments submitted on the 2000 EPA *Revised Draft Guidance for Investigating Title VI Administrative Complaints Challenging Permits.*
  - Establish a date by which the EPA will complete its investigations and resolve all pending Title VI civil rights complaints, with the involvement of complainants and their attorneys.

Prioritize civil rights and human rights protection within the Federal Inter-Agency Work Group on Environmental Justice.

AIR DIVISION

California Air Resources Board Cap and Trade Program

Updated - February 1, 2012

On October 20, 2011, the California Air Resources Board (CARB) adopted their cap and trade regulations. The cap and trade program is a key element in California's climate plan. It sets a statewide limit on sources responsible for 85 percent of California's greenhouse gas emissions,

and establishes a price signal needed to drive long-term investment in cleaner fuels and more efficient use of energy. The regulation will cover 360 businesses representing 600 facilities. The facility registration deadline was January 31, 2012. The program is divided into two phases: the first, beginning in 2013, includes all major industrial sources and electric utilities; the second, starting in 2015, brings in distributors of transportation fuels, natural gas and other fuels.

- CARB will provide the majority of allowances (free) to all industrial sources during the initial period (2013-2014), using a calculation that rewards the most efficient companies. Those that need additional allowances to cover their emissions can purchase them at regular quarterly auctions run by CARB, or buy them on the market. The first auctions of allowances (for 2013 allowances) are slated for August and November 2012. In his proposed budget, Governor Brown indicated that the expected $1B in proceeds this fiscal year will be used to support greenhouse gas reductions in a manner that would create jobs and deliver public health, economic, and environmental benefits.

- Eight percent of a company's emissions can be covered using credits from CARB-certified offset projects, promoting the development of beneficial environmental projects in uncapped sectors such as forestry and agriculture. Included in the regulation are four protocols in forestry management; urban forestry; dairy methane digesters; and the destruction of ozone-depleting substances in the U.S.

- The regulation includes rigorous oversight and enforcement provisions, and is designed so that California may link up with programs in other states or provinces within the Western Climate Initiative, including British Columbia, Ontario and Quebec.